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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,232	01/14/2004	Evan Kirshenbaum	200401797-1	3264

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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P. O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER

WACHSMAN, HAL D

ART UNIT	PAPER NUMBER
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2857

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10/757 232

EXAMINER

ART UNIT	PAPER
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12112005

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Hal D Wachsman
Primary Examiner
Art Unit: 2857

Office Action Summary

Application No.

10/757,232

Applicant(s)

KIRSHENBAUM ET AL.

Examiner

Hal D. Wachsman

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 21-26 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-14-04</u> . | 6) <input type="checkbox"/> Other: _____ |

1. The Applicant's arguments filed in the reply of 10-24-05 with respect to the restriction requirement are persuasive and thus the restriction requirement is hereby withdrawn. All of the claims have been examined on the merits.
2. The Abstract is objected to because it contains legal phraseology such as for example "said product", "said display", etc. Appropriate correction is required.
3. The CROSS-REFERENCE TO RELATED APPLICATIONS section on page 1 of the specification does not provide the status of U.S. application serial no. 09/931,479 (i.e. abandoned). Appropriate correction is required.
4. The paragraph under "(5.1) FIELD" on page 1 of the specification is indicated as paragraph [0001]. However, the first paragraph in the specification is the paragraph under the CROSS-REFERENCE TO RELATED APPLICATIONS heading. Appropriate explanation/correction is required.
5. On page 11, paragraph 0032, line 18, of the specification, there is what appears to be a strikethrough of the word "is" at the end of the line. If the specification was intended to be amended to delete that word, then this amendment is not in accordance with 37 C.F.R. 1.121 as no replacement paragraph was submitted for this section. Also, page 10, line 16, of the specification cites "...is seal in its package" however was this intended to be "...is sealed in its package " ? In addition, on page 12, line 4, it appears that the word "of" is missing between the words "part" and "the". Appropriate explanation/correction is required.
6. Page 4, paragraph 0008, of the specification, cites "...is provided in accordance with the mandate of 37 C.F.R. 1.73 and M.P.E.P. 608.01(d)...in order to be of

assistance in aiding ready understanding of the patent in future searches” and the bottom of page 25 to the top of page 26 of the specification states “..Moreover, no element, component, nor method step..is intended to be dedicated to the public regardless..No claim element herein is to be construed under the provisions of 35 U.S.C. Sec. 112, sixth paragraph...”. However all of the above is improper to have in a specification because a specification (see MPEP 608.01, 37 C.F.R. 1.71) is for providing a written description of the invention or discovery and of the manner and process of making and using the same. Appropriate correction is required.

7. Claims 3-6, 9, 12, 13, 16, 20 and 22-25 are objected to under 37 C.F.R. 1.75(a) for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 3, line 2, cites “the future viability state condition” however the antecedent basis is “at least one future viability state condition”. This same type of problem also occurs in claim 4, line 2, claim 5, line 2. Claim 6, lines 4-5, cite “said data from said monitoring device” which lacks antecedent basis. Claim 9, line 2, cites “a display is integrated...” however was this intended to be “a display that is integrated...” ? Claim 12, line 1, cites “said time-related characteristic” however the antecedent basis is “at least one time-related characteristic”. This same type of problem also occurs in claim 13, line 1. Claim 16, lines 3-4, cite “...when said product was disassociated from said means for obtaining” however disassociated in what way exactly is being referred to here ? Claim 20, line 2, cites “said viability” however the antecedent basis is “at least one viability factor”. This same type of problem also occurs in claim 24, line 4. Claim 22, line 7, cites “said monitoring device” however the

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antecedent basis is "at least one monitoring device". This same type of problem also occurs in claim 24, lines 2 and 4. Claim 22, line 7, cites "said storing device" however the antecedent basis is "at least one storing device". Claim 22, line 8, cites "said data" however is this referring to the data related to the maturation and degradation ? Claim 22, line 10, cites "said data processing device" however the antecedent basis is "at least one data processing device". This same type of problem also occurs in claim 23, line 2, claim 24, lines 2 and 3. Claim 25, line 3, cites "associating a time-based history of environmental data and handling data of the item" which does not particularly point out how exactly the time-based history and the handling data are being associated. Claim 26, line 1, cites "The apparatus as set forth in claim 7..." however claim 7 sets forth a monitoring system. Claim 26, lines 1-2, cite "said at least one predetermined rule" which lacks antecedent basis. Claim 26, line 2, cites "said means for calculating" which lacks antecedent basis. The examiner asks the applicant to better claim the limitations cited above. While the examiner understands the intentions of the applicant he feels confusion could be drawn from the limitations cited above. Appropriate correction is required.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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9. Claims 1, 3-9, 11-13, 15-19, and 21-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Reber et al. (5,798,694).

As per claim 1, Reber et al. (Abstract, figures 3, 5, col. 4 lines 33-45) disclose "monitoring and storing data....with a viability state condition of said product". Reber et al. (figures 5, 10, col. 11 lines 52, 53, col. 12 lines 28-30) disclose "analyzing the data associated with said at least one characteristic". Reber et al. (figures 2, 3, 5, 10, col. 3 lines 64-67, col. 4 lines 1, 2, 28-32) disclose "based on said analyzing, predicting at least one future viability state condition...said data associated with at least one characteristic". Reber et al. (figures 2, 5, 10, col. 3 lines 56-67, col. 4 lines 1-11) disclose "displaying at least one indicator related to said at least one future viability state condition".

As per claim 3, Reber et al. (see at least figures 2, 3, 5, 10) disclose the feature of this claim.

As per claim 4, Reber et al. (figure 2, col. 4 lines 14-32) disclose the feature of this claim.

As per claim 5, Reber et al. (col. 5 lines 33-55) disclose the feature of this claim.

As per claim 6, Reber et al. (Abstract, col. 2 lines 14-26, col. 3 lines 46-49, col. 4 lines 15-19, 35-45) disclose "a containment for a product having viability factors". Reber et al. (see at least abstract) disclose "affixed to said containment, a product viability-related conditions monitoring device". Reber et al. (Abstract, figures 5, 6)

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disclose "an analysis device for receiving, for storing, and for analyzing....of at least one viability factor for a product stored within said containment".

As per claim 7, Reber et al. (see at least abstract) disclose "a resealable containment for holding said product". Reber et al. (Abstract, figures 2-4) disclose "a data collection device...related to viability of said product". Reber et al. (figures 2, 3, 5, 10, col. 3 lines 64-67, col. 4 lines 1, 2, 28-32, col. 11 lines 52, 53, col. 12 lines 28-30) disclose "a parameters analysis device for analyzing data...exhibiting at least one product viability conclusion based on said data".

As per claim 8, Reber et al. (see at least abstract) disclose the feature of this claim.

As per claim 9, Reber et al. (Abstract, figure 5, col. 4 lines 2-4, 58-60, col. 10 lines 24-35) disclose the feature of this claim.

As per claim 11, Reber et al. (Abstract, figures 2-4) disclose "associated with the product, means for obtaining measurements pertinent to viability". Reber et al. (figures 3, 4) disclose "associated with the means for obtaining measurements...at least one time-related characteristic for the product". Reber et al. (figures 2, 5, 10, col. 3 lines 56-67, col. 4 lines 1-11) disclose "associated with the means for calculating, means for displaying said at least one time-related characteristic".

As per claim 12, Reber et al. (col. 10 lines 38-40, 62-65) disclose the feature of this claim.

As per claim 13, Reber et al. (figure 2, col. 4 lines 14-32) disclose the feature of this claim.

As per claim 15, Reber et al. (col. 4 lines 52-64) disclose the feature of this claim.

As per claim 16, Reber et al. (figure 4, col. 4 lines 65-67, col. 5 lines 1-32) disclose the feature of this claim.

As per claim 17, Reber et al. (figure 5, col. 4 lines 49-52, col. 10 lines 40-51) disclose the feature of this claim.

As per claim 18, Reber et al. (figures 3, 4, 10) disclose the feature of this claim.

As per claim 19, Reber et al. (col. 4 lines 52-64) disclose the feature of this claim.

As per claim 21, Reber et al. (figures 2, 4, 5, 10) disclose the feature of this claim.

As per claim 22, Reber et al. (Abstract, figures 2, 3, 5, col. 4 lines 33-45) disclose "at least one monitoring device wherein ..with maturation and degradation of the product is monitored". Reber et al. (see at least figures 5-7) disclose "at least one storing device...maturation and degradation is stored". Reber et al. (figures 2, 5, 10, col. 3 lines 56-67, col. 4 lines 1-11, col. 11 lines 52, 53, col. 12 lines 28-30) disclose "associated with said monitoring device and said storing device...dynamic viability data is calculated". Reber et al. (figures 2, 5, 10, col. 3 lines 56-67, col. 4 lines 1-11) disclose "associated with said data processing device..dynamic viability data is displayed".

As per claim 23, Reber et al. (col. 4 lines 52-64) disclose the feature of this claim.

As per claim 24, Reber et al. (Abstract, figures 5, 6) disclose the feature of this claim.

As per claim 25, Reber et al. (Abstract, figures 3, 4, 10) disclose "associating a time-based history of environmental data and handling data of the item" and "substantially continuously compiling the time-based history". Reber et al. (figures 2-4, col. 4 lines 52-64) disclose "based on the time-based history and at least one rule associated with viability of the item...calculating at least one time reference associated with the viability". Reber et al. (see at least figures 2, 3) disclose "substantially continuously displaying said at least one time reference".

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reber et al. (5,798,694) in view of Lindsay et al. (US 2004/0100380 A1).

As per claim 2, Lindsay et al. (see at least abstract) teach the feature of this claim. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Lindsay et al. to the invention of Reber et al. as specified above because as taught by Lindsay et al. (Abstract) food products may typically have an expiration date or a date when they are no longer fresh.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reber et al. (5,798,694) in view of Pohle et al. (6,275,779).

As per claim 10, Pohle et al. (figure 2) teach the feature of this claim. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Pohle et al. to the invention of Reber et al. as specified above because as over time the contents of a container with products may change, at each change of contents a resetting would be needed to ensure that the data that is being recorded is applicable to the product that is currently in the container.

13. Claims 14 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reber et al. (5,798,694) in view of Starling et al. (US 2002/0161545 A1).

As per claim 14, Starling et al. (Abstract, figure 2, paragraphs 0048, 0049) teach the feature of this claim. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Starling et al. to

the invention of Reber et al. as specified above because as taught by Starling et al. (paragraph 0049) it would enable a particular store's food safety and quality management performance to be compared with other stores within the chain or with industry as a whole, to determine how that particular store is performing and whether actions to improve performance are required.

As per claim 26, Starling et al. (Abstract, figure 2, paragraphs 0048, 0049) teach the feature of this claim. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Starling et al. to the invention of Reber et al. as specified above because as taught by Starling et al. (paragraph 0049) it would enable a particular store's food safety and quality management performance to be compared with other stores within the chain or with industry as a whole, to determine how that particular store is performing and whether actions to improve performance are required.

14. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims subject to the appropriate correction of the 37 C.F.R. 1.75(a) objection noted in paragraph 7 above.

15. The following references are cited as being art of general interest: Shulman et al. (4,114,450) which disclose the collection of time histories, Bray (6,158,381) which discloses a time-temperature indicator, Soga et al. (5,867,809) which disclose remaining life estimation, Blackman (6,009,400) which discloses alerting customers from purchasing perished items, Bommarito et al. (6,741,523) which disclose


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microstructured time dependent indicators, Kirkpatrick (5,424,720) which discloses the keeping of time/temperature records and McKinney et al. (5,946,919) which disclose a food conservator system.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D. Wachsman whose telephone number is 571-272-2225. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Hal D Wachsman
Primary Examiner
Art Unit 2857

HW

December 11, 2005